1951

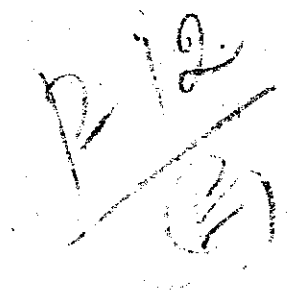
File No. O.C. of Wards /51

Legal Deptt

A BRANCH

K.

Subject:— Opinions under the Bombay Court of Wards Act 1905—



O. Ct of Wards /51

File No.

Gen. 194

525-A

R.I.No.5408 dt. 17-3-51

2. It appears that the Court ordered the dismissal of the application filed by the Collr. under sec. 5(1)(b) of the Bombay Court of Wards Act, 1905 and each party was asked to bear costs. When the Collr. made the application under sec. 5(1)(b) he was not acting as Court of Wards but only as the Collr. Provisions of sec. 35 will not be available in this case and the amount cannot be recovered from the estate. The view taken at 'A' of the Collr's letter at p. 123 ante is ~~xxxxxxx~~ correct.

Sd/- P.S.Nadkarni
27/4

D.S. (Civil) As in para 2. Addl. Secy.
Id/-R.T.K. 28/4 Dd. 28/4

U.R. to R.D.No. 6901 dt. 1-5-51.

BKS. 12/6/ 4e.

Legal Department.

Bombay Taluqdar's Tenure Abolition Act, 1949 sec. 17C.

The view at A of the Collector's letter at page 233 ante is correct. (See the proviso to section 17 of the Bombay Taluqdari Tenure Abolition Act, 1949, read with section 290 of the Taluqdars' Act, 1868). However the Collector and the Court of Wards acting as a trustee cannot agree to the transfer of the land free of charge, even though it be for a public purpose.

Id/-
Additional Secretary to Government.

No. 7300 , dated the 8th May 1951.

BKS. 12/6/ 4c.

Legal Department.

Management of the property of Jinsen Swami.

Bombay Court of Wards Act,1905 section 5
Civil Procedure Code, 1908 section 92
&
Bombay Public Trust Act, section 50.

The request of the applicant to take over the property of the Math for management under the provisions of the Bombay Court of Wards Act,1905 is on clearly untenable. Superintendence of property under that Act can be assumed only in the cases provided for in sections 4 to 10. The present case does not fall within any of the provisions of those section. In the present case the Swami is not a landholder as defined in section 2(b), nor is he disqualified to manage his property under section 5(1). Consequently the provisions of the Act would not be available. The property appears to be a public religious trust. In these circumstances, the only course open to the applicant to save the property from being mismanaged is to approach the proper court under the provisions of section 92 of the Civil Procedure Code or under section 50 of the Bombay Public Trusts Act, 1950 after that Act comes into operation.

Id/-
Additional Secretary to Government.

U.R. to R.D.No. 8455 dated the 29th May 1951.

BKS. 12/6/ 4c.

Office of the R.L.A.

Court of Wards Act, 1905 (Bom. I of 1905).

One Shri Tajmohamad Kamal Khan who was a common servant for 4 estates under the management of Court of Wards has been allowed to retire with effect from 8-11-1950. Details of his service under the four estates under management f of the Court of Wards are as below :-

	Yrs.	M.	Days.
i) Police Constable (Kathi). 8-10-1919 to 15-1-1931	11	3	7
ii) Treasury Guard. 16-1-31 to 17-5-1941. (Kathi, Raisingpur & Gangtha.)	10	4	2
iii) Treasury Guard. 18-5-41 to 28-2-50 (Kathi & Raisingpur).	8	9	10
iv) Treasury ~~Gm~~ Guard. 29-2-1950 to 8-11-1950 (Kathi, Raisingpur & Wala).		9	10

The total pension due to him comes to Rs. 18-4-0 p.m. and the Court of Wards has power to sanction it ~~mxy~~ by virtue of G.R.,R.D. No.5215/24 dated the 11th November 1936. The management over two estates ~~f~~viz. Gangtha and Raisingpu-r) has been withdrawn with effect from 18-5-1951 and 24-9-1950 respectively, with the result that the Chieftains of these two estates do not agree to bear a proportionate share of pension. They contend that any orders now issued regarding pension would not be binding on them as management ~~x~~ has been withdrawn. A reference is made to R.L.A's opinion No.4225 dated the 24th August 1938 in which he advised that if the ~~A~~ Court of Wards has sanctioned pension to any employee of the ~~xxxxxxx~~ estate, the owner of the property would be bound to continue it after the retrocession of the estate to him both on principles of agency and under the terms of section 40(2) of the Act. In the present case Revenue Department has raised a question whether any estate is bound to pay the pension sanctioned after withdrawal of management over the estate. It considers that the estates would be equitably under obligation to pay proportionate pension. R.L.A. is requested

to advise.

2. In his opinion No.2245 dated the 9th April 1936, the R.L.A. referred to section 25 of the Court of Wards Act,1905, which provides, inter alia, that a Court of Wards may do all such things, requisite for the proper care and management of the property of which it assumes the superintendence, as the owner of the property might do for its proper care and management and held that the powers of the Court of Wards were very wide and would include the power to determine the conditions of service of x the employees of the estate of which it assumed the superintendence. The conditions of service of the employee in question can therefore be deemed to have been determined when his services were engaged by the Court of Wards for the estates. Proviso to sub-section (2) of section 40 of the Bombay Court of Wards Act,1905 provides that where the Court of Wards withdraws its superintendence, such withdrawal shall not affect xx any contract entered into by the Court of Wards in the lawful exercise of its powers. "The Court of Wards acts for and on behalf of its ward under the general principles of law. The principal is bound by the action of his agent acting within his lawful authority. The Court of Wards, though constituted by statute, is, therefore, really an agent on his behalf, and the Ward would be bound by any action of the Court of Wards taken by it in the lawful exercise of its powers." (R.L.A.'s Opinion No.4225 dated 24-8-1936). Though the pension has become due to the employee after withdrawal of management the conditions of service of the employee were determined by the Court of Wards in lawful exercise of its powers during the management of the estate and under proviso to sub-section (2) of section 40 such contract will be binding on the estate. The view taken by Revenue Department is correct. If however, the owners of the two estates do not honour the liability arising under the contract of service, the servant in question can only enforce his claim against the two estates by a regular civil suit.

Id/-J.R.D. 3/10
Remembrancer of Legal Affairs.

U.R. to R.D.No. 15748, dated the 4th October , 1951.

BKS. 12/6/ 4c.

Office of the R.L.A.

The Collector of Kolhapur in his letter at p.155 ante has proposed that the junior widow Yamunabai may be recognised as the land-holder in respect of saranjam and inam property so that that property might be taken possession of for management under section 9 of the Bombay Court of Wards Act,1905. The question raised for the R.L.A.'s consideration is whether the proposal of the Collector is legally feasible.

The property of the family consists of three kinds (1) Saranjam, (2) inam, and (3) rayatawa. So far as the saranjam property is concerned, Shri Yashwant Maharaj has been directed by Government to prove his adoption in a court of law and thereafter apply to Government for sanction. It would, therefore, follow that unless his adoption has been duly proved and Government sanction is given to the adoption, Shri Yashwant willhave no claim for the regrant of the saranjam. Apparently, therefore, the saranjam must have been now under resumption and the junior widow Yamunabai cannot be recognised in ~~them~~ as the holder of the saranjam as the saranjam is to be resumed and regranted to the eldest male representative in the order of primogeniture of the senior branch of the family descended from the original grantee.

So far as the inam property is concerned, it appears that Yashwant is already in possession of it and he cannot be evicted unless his adoption is held invalid. Similar would be the position of rayatawa property. ~~Since~~ To save this property from being wasted, it would be possible to take action under section ~~12~~ 10(1) of the Bombay Court of Wards Act; but for that purpose Yashwant will have to be recognised as the holder of the property . Such recognition would be prejudicial to the claim of the junior widow, Yamunabai. In the circumstances, it appears that if Yamunabai is anxious to save the property she should file a suit in a court ~~s~~ for a declaration that Yashwant's adoption

P.R. O.

is invalid and for possession of the property and pending the disposal of the suit she may ask for the appointment of a receiver. In the circumstances, it appears that the proposal made by the Collector would not be legally feasible.

Id/-J .R.D. 26/10
Remembrancer of Legal Affairs.

U.R. to [redacted] P. & S.D.No. 17094, dated the 26th October 1951.

EXS. 12 /6
4e.

Office of the R.L.A.

In accordance with the suggestion made by Secretary, R.D. a conference of all the parties interested in the Purandare estate was called and an agreement was arrived at that the matters in dispute among the parties should be referred to for the arbitration of persons appointed by Government. Accordingly an agreement was drawn up and was executed by all parties concerned. Three arbitrators were appointed, two of whom were retired judicial officers and one was a retired Deputy Collector. But as soon as the arbitrators commenced the proceedings, Shri R.S.Purandhare and his wife Sumatibai started putting obstacles in the way of the arbitrators. The opposing parties who are Radhabai, the mother of R.S.Purandare and his two sons by his first wife started making efforts that they should get all the benefit under the alleged will of Sadashivrao Purandare who was the father of R.S.Purandare and who is now dead. This obstructive attitude on the part of the parties went to such an extent that at one stage the arbitrators sent in their resignations which they were persuaded to withdraw. It appears that R.S.Purandare and his wife then filed an application to the Joint Civil Judge, Poona, under section 33 of the Indian Arbitration Act, 1940, challenging the validity of the arbitration reference. The application was dismissed by the Joint Civil Judge. Against his decision a revision application was filed to the High Court. The High Court rejected the application on the ground that it was premature, but while rejecting it has made observations on the two grounds urged regarding the validity of the reference. These two grounds are:- (1) whether the minor children of R.S.Purandare were properly represented by Sumatibai their mother, when their father, who is the natural

guardian is alive, and (2) whether the arbitration reference which refers the question of the validity of the will alleged to have been made by late Sadashivrao Purandare to arbitration is valid in law. On both the points the Chief Justice is inclined to hold that the arbitration reference is defective. It does not appear that observations of the Chief Justice which are obiter dicta are quite correct. R.S.Purandare was first described as the guardian of his minor children. When he refused to act as such, his wife who is the next natural guardian was permitted to describe herself as the guardian of the minors. As regards the second point, it is true that the arbitration reference no doubt refers to "all questions arising out of or in any way relating to the validity of the provisions of the said will "as being referred to arbitration. The validity may involve:- (1) the genuineness of a will and (2) the capacity to make a will. The first question is a matter for the exclusive jurisdiction of a court to decide and cannot be referred to arbitration (see I.L.R. 21 Bom.335). But it has been held by the Calcutta High Court in a case like the present that a question regarding the validity of the will can be referred to arbitration (Jagdish v. Upendra 48 C.W.N. 294). Even if the Calcutta decision is not to be followed, it would have been open to the arbitrators to adjudicate without going into the question of the genuiness of the will (25 Bom.L.R.437). It appears that the arbitrators have not borne this distinction in mind and have proceeded on the assumption that the will is genuine and properly made. In these circumstances if the arbitrators are allowed to proceed with the arbitration and to declare the final award, it is very likely that its validity would be challenged. Except the fact that a part of the property is saranjam, Government have no real interest in thismatter. As the attempt of Government to settle the disputes amicably have failed, no useful purpose

will be served by directing the Court of Wards to pay such a large amount as Rs.25,000 for the stamp of the award to enable the arbitrators to declare their final award and to file it in Court. The proper course for Government to take is to relinquish the management of the estate and as suggested by the Chief Secretary in his note of 11th February 1948 (R.D.file No.2346/45-III p.103) to leave the parties to have their disputes settled in the Court. A partition decree has been passed by the Poona Court and confirmed by the High Court between Sadashiv Purandare and R.S.Purandare. The Court of Wards is a party to the execution proceedings. The Court of Wards should apply to the Court in those proceedings stating that the Court should appoint a receiver, and the Court of Wards on the relinquishment of management of the estate will hand over the possession of the estate to such receiver, except however the saranjam property which has been resumed by Government onthe death of Sadashivrao. As regards the saranjam, it should be made clear that Government does not propose to decide the question whether it would regrant the saranjam to any heir of Sadashivrao and if so to whom. The Collector of Poona who is acting as the Court of Wards should consider whether he sees any objection to such a course.

Id/-J.R.D. 27/10
Remembrancer of Legal Affairs.

U.R. to R.D. No. 17193, dated the 29th October 1951.

BKS. 12/6/ 40.

Office of the R.L.A.

The Poshina Jahagir of the merged territory of Idar State is at present under the management of the Collector of Sabarkantha as the Court of Wards. A debt of Rs.1173/5/- was incurred by the late Jahagirdar about 25 years ago on account of supplied of foodgrains etc. The crediter Shri Nabhibhai Umambhai has applied to the Collector for the payment of that amount out of the Estate with compound interest extending to Rs.4380/7/6. The original application had been made by the creditor in the year 1939, but the Idar State Authorities refused to pay the amount so long as the estate was under the Court of Wards. The Collector of Banaskantha has now made a proposal to pay to the said crediter the sum or Rs.1173/5/- plus interest amounting to Rs.586/10/6. The Collector's proposal is made on the suggestion made by the District Government Pleader in the concluding portion of his opinion at page 153 of the case papers. The Revenue Department is inclined to accept the Collector's suggestion. However the R.L.A. is requested to advise.

2. Attention is invited to the Government Pleader's opinion dated 18th February 1951 at pp.153-154 of the case papers. The Government Pleader has definitely stated that the claim is barred by limitation. However, he has made the suggestion to repay the principal of Rs.1173/5/- with such interest as the Collector deems fit "with a view to put an end to the long standing correspondence". The reason advanced by the Collector is "to maintain the prestige of the Jagir". In paragraph 7 of his letter the Collector states that the wife of the late Kr Thakore was also consulted and she is reported to have stated that the legitimate dues should be paid to the creditor. All these reasons however do not appear to be convincing. Admittedly

the claim is time barred. Even the State Authorities had not accepted responsibility for the repayment of the debt when the Estate was under their management before merger. Under section 27 of the Bombay Court of Wards Act, 1905, the Court of Wards can sell, exchange, mortgage, charge or let the property of a Government ward and can do all such things as it may judge to be best for the benefit of the property and the advantage of the Government ward. Considering the object of section 27 it does not appear the Collector's present proposal to pay the barred debt would be consistent with it. Moreover as reported by the Collector himself in the Idar State there was a ban on lending many money to Jagirdars without the previous sanction of the State Authorities. In these circumstances the Collector's proposal should not be accepted.

Id/-J.R.D. 27/11
Remembrancer of Legal Affairs.

U.R. to R.D.No. 19131, dated the 29th November, 1951.

BKS. 12/6/ 4c.